



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5634 OF 2023

Abdul Rashid Mohammad Yasin through LR's and others .Vs. Collector, Akola, Tq.
and Dist. Akola and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.A. Joshi, Advocate for petitioners.

Ms. H.N. Jaipurkar, A.G.P. for respondent No.1/State.

Shri Amol Deshpande, Advocate for respondent No.2.

CORAM : ANIL S. KILOR, J.

DATED : 06/09/2023

1. A prayer made by the petitioners for grant of temporary injunction, restraining the respondent-Municipal Corporation from removing the temporary structures erected by the petitioners, came to be disallowed by the learned trial Court and it has been upheld by the learned first appellate Court. Hence, this petition.

2. In the earlier round of litigation in a Regular Civil Suit No.467 of 1997, the learned trial Court vide judgment and decree dated 28.01.2003 restrained the Collector and the Municipal Council, Akola from dispossessing the petitioners from the suit site without following due process of law. Similar order was passed in Regular Darkhast No.171 of 2006 vide judgment and order dated 16.01.2016.

3. Thereupon, the notice was issued by the Municipal Corporation, Akola for removal of tin shed constructed by the petitioners on the ground that this tin shed is creating hurdles and obstruction in the smooth flow of traffic.

4. The petitioners replied the same and opposed such notice and thereupon, filed temporary injunction application in Regular Darkhast No.58 of 2023. The said application came to be rejected vide order dated 05.08.2023 and in the appeal the same came to be upheld vide judgment and order dated 23.08.2023.

5. It is the case of the petitioners that, the land belongs to nazul and therefore, except the government, no other authority including the corporation has power or authority to issue notice to the petitioners.

6. It is submitted that the petitioners are in possession of the tin sheds in question from year 1978 continuously and paying municipal taxes regularly and therefore, they cannot be termed as encroachers. It is therefore, submitted that the notice itself is illegal.

7. It is further submitted that after filing of the reply to the notice, no hearing was granted to the petitioners.

8. Shri Deshpande, learned counsel for the Municipal Council opposes the present writ petition and submits that, before the trial Court in Regular Civil Suit No.467 of 1997, it was the case of the petitioners that the land is of nazul and it is given to the Municipal Council for management and the petitioners pay taxes to the Municipal Corporation and rent to the Collector. It is therefore submitted that, even if the case of the petitioners are accepted, the Municipal Corporation has every right and authority to issue notices.

9. In the light of rival contentions, I have perused the record and the impugned judgment and order.

10. Admittedly, nothing has been brought on record to show that the nazul department has allotted this land to the petitioners to erect the structures or any permission for erection such structures was granted.

11. In the suit namely Reg. Civil Suit No.467 of 1997, it is the case of the petitioners that the land was handed over to the Municipal Corporation by nazul, for management. Thus, the ground that the Municipal Corporation has no authority to issue notice, does not survive.

12. In this matter, the notice was issued to the petitioners for removal of tin sheds as the tin sheds in question are creating obstruction and hurdles in the smooth flow of traffic.

13. In the circumstances, in absence of any evidence produced by the petitioners to show that they have any right to continue in possession of the tin sheds in question, denial of temporary injunction by both the Courts below is just and proper and needs no interfere. Accordingly, the writ petition is **dismissed**.

14. At this stage, Shri Joshi, learned counsel for the petitioners seeks protection for four weeks which Shri Deshpande, learned counsel for the Municipal Corporation and Ms Jaipurkar, A.G.P. have opposed.

15. However, considering the fact that till today, the status quo was in operation, the order of status quo shall continue for another four weeks and thereafter, it shall stand vacated automatically.

JUDGE